

## EMERGENCY

### Part XVIII of the Constitution

- Articles 352 to Article 360 contains emergency provisions
- The emergency provisions of the Indian Constitution were borrowed from the German Constitution
- Part XVIII of the Constitution states three kinds of emergency:
  1. Emergency (Art. 352)
  2. State Emergency, called **President's Rule** (Art 356)
  3. Financial Emergency (Act. 360)
- Two duties are imposed on the Centre by **Article 355** of the Constitution:
  1. To protect every State from external aggression and internal disturbance
  2. To ensure that the Government of every State is carried on in accordance with the provisions of the Constitution

### ARTICLE 352

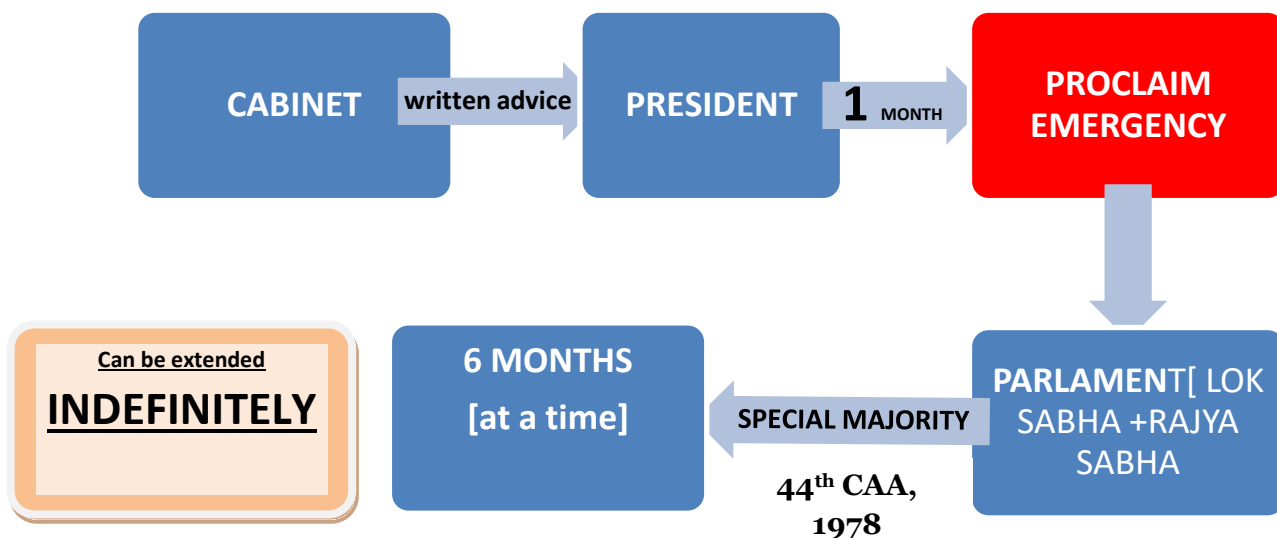
- **Proclamation of emergency** can be made under any of the three circumstances by **President** under Article 352(1) if he is satisfied that a grave emergency exists for the following reasons. He may by proclamation make a declaration to that effect in respect of the whole of India or part of territory thereof as may be specified in the proclamation
  - ✓ War
  - ✓ External Aggression
  - ✓ Armed Rebellion [**inserted by the 44<sup>th</sup> CAA, 1978 in place of 'internal disturbance'**]
- **Territorial extent of emergency:** the emergency can be proclaimed either for the whole of India or for any part of country
- The Proclamation of emergency could only be issued by the **President**, on recommendations of the **Council of Ministers, in writing.**
- **44<sup>th</sup> Amendment** also added that Proclamation of Emergency may be made if the security of India or any part thereof is threatened, even before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof

- **38<sup>TH</sup> amendment** added that the President may, if satisfied, issue different proclamations on different grounds, even if a proclamation has already been issued and is in operation. It also made the declaration of National Emergency immune to **judicial review**. But, this provision was subsequently deleted by the 44<sup>th</sup> Amendment Act of 1978.
- **In Minerva Mills case (1980)**, the Supreme Court held that National Emergency can be challenged in the court on the ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts.

---

• **Procedure of Approval by parliament**

---



- The proclamation of emergency must be laid before each house of the Parliament and it shall cease to operate at the expiration of **one month** unless before the expiry of one month it is approved by the resolution by both houses of the Parliament.
- House approves the proclamation by passing a resolution with **special majority** (44<sup>TH</sup> CAA, 1978 before this it was simple majority) to that effect; it shall remain in force for a period **of six months**.
- If either House takes no action, it shall expire after one month. If the proclamation is rejected or disapproved, it shall be revoked by the president with immediate effect.
- If the proclamation of emergency is issued at a time when Lok Sabha is dissolved or dissolution take place within one month of the proclamation without approving the proclamation but the proclamation has been approved by Rajya Sabha then the proclamation will have to be approved by Lok Sabha within 30 days from the date

when the newly constituted Lok Sabha first sits. If it does not approve within the 30 days then the proclamation shall cease to operate

- 
- **Duration of emergency:** proclamation of emergency was approved by the Parliament shall remain in Force for a period of **six months** [unless revoked earlier] from the date of passing of 2nd resolution approving the proclamation.
  - For the continuance of emergency beyond 6 month approval by Parliament would be required every six months.

---

- **Revocation of proclamation**

- A proclamation of Emergency may be revoked by the President at any time by a subsequent proclamation. Such proclamation does not require parliamentary approval.
- The emergency must be revoked if the Lok Sabha passes a resolution by a simple majority disapproving its continuation.

- **Power of Lok Sabha to pass resolution for discontinuance of emergency:** the president shall revoke a proclamation if the Lok Sabha passes a resolution disapproving the continuance in force of such proclamation

- **Special sitting of Lok Sabha:** Where are written notice signed by not less than **1/10th** Of the total members of Lok Sabha has been given to:-

1. The speaker, if the house is in session or
2. The president if the house is not in session

- Special sitting of the Lok Sabha shall be held within **14 days** from the date of receipt of the notice.
- The notice will contain an intention to move a resolution for disproving the continuance of proclamation. The special sitting will be held to consider such resolution.

- ✓ **SARBANANADA SONOWAL V UNION OF INDIA (2005)** The Supreme Court for the first time got the opportunity to interpret the word aggression in Article 355. Interpreting the word “aggression”, the court held that it is not to be confined in interpretation with the word “war”. Aggression comprises many acts

which cannot be termed as war. The framers of the Constitution have deliberately used the word “aggression” and not “war”.

Internal disturbance is a matter of concern; it does not threaten the security of the country or part thereof, unlike armed rebellion. Further, internal disturbance by itself cannot be a ground for proclamation of emergency under Article 356 if there is no failure of constitutional machinery of State.

---

- **EFFECTS OF PROCLAMATION OF EMERGENCY**

- ✓ **ARTICLE 353: Effect of proclamation of emergency**

1. During emergency, the executive power of the Union extends to giving directions to a State as to the manner in which the executive power is to be exercised. [article 353[a]]
2. The Parliament shall have power to make laws, conferring powers or imposing duties with respect to any matter in the state list[**article 353[b]**]. This means that the legislative power of the Union also is extended to making laws in the State List, and has an overriding effect. This includes the power to impose duties on the Union and its officers.

- ✓ **ARTICLE 354: Application of provisions relating to distribution of revenues while a proclamation of emergency is in operation**

The financial arrangements between states and the Union as given under Articles 268 to 279 may also be **altered by order of the President** during proclamation of emergency, which is to be laid before each House of Parliament. This arrangement will cease to operate after the cessation of emergency. **This means The Centre can alter distribution of revenue between Union and States under article 354**

- ✓ **ARTICLE 358: Suspension of fundamental rights under article 19: [automatic suspension]**

If the emergency is an operation on the ground of **War or external aggression** [**44<sup>th</sup> CAA, 1948**] then the state can make any law or take any

executive action abridging the rights guaranteed under article 19. [**Article 358**]

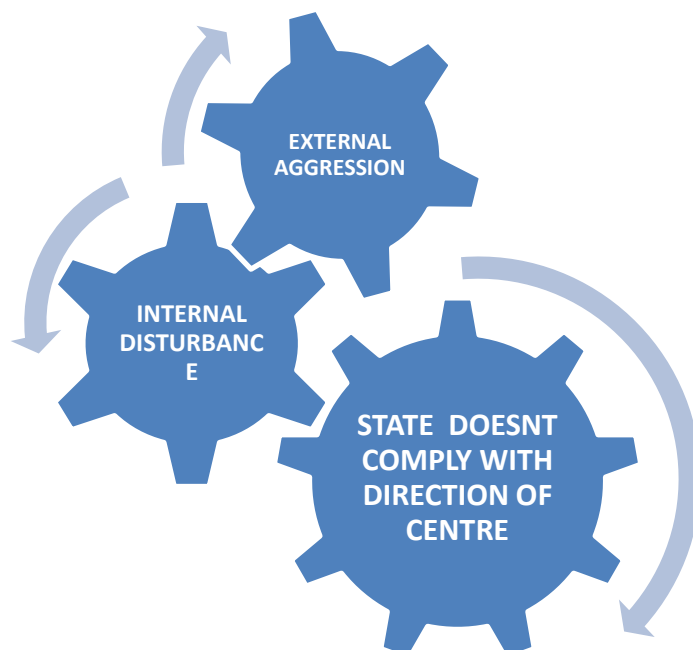
✓ **ARTICLE 359: Suspension of the enforcement of the rights conferred by part III during emergencies**

When a proclamation of emergency is in operation, enforcement of fundamental rights **except Articles 20 and 21 (44<sup>th</sup> Amendment)** may be suspended by the President in the whole or any part of India. This again has to be laid before each House of Parliament.

- ✓ In **ADM Jabalpur vs. Shivkant Shukla 1976** Supreme Court held that during the proclamation of emergency rights under article 21 can also be suspended and no person shall have any *locus standi* for enforcement of such right. This case is also known *habeas corpus* case.

## **Failure of Constitutional Machinery of State or State Emergency [Article 356]**

- Two duties are imposed on the Centre by **Article 355** of the Constitution:
    1. To protect every State from external aggression and internal disturbance
    2. To ensure that the Government of every State is carried on in accordance with the provisions of the Constitution
  - It is this duty in the performance of which the centre takes over the government of a state under Article 356 in case of failure of constitutional machinery in a state.
- 
- **Grounds of imposition:** the president's rule can be proclaimed under Article 356 on **two grounds**:
    1. **Article 356** empowers the President to issue a proclamation if he is **satisfied** that a situation has arisen in which the government of a state cannot be carried on in accordance with the provisions of the constitution.
    2. **Article 365** says that whenever a state fails to comply with or to give effect to any direction from the centre, it will be lawful for the President to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the constitution.

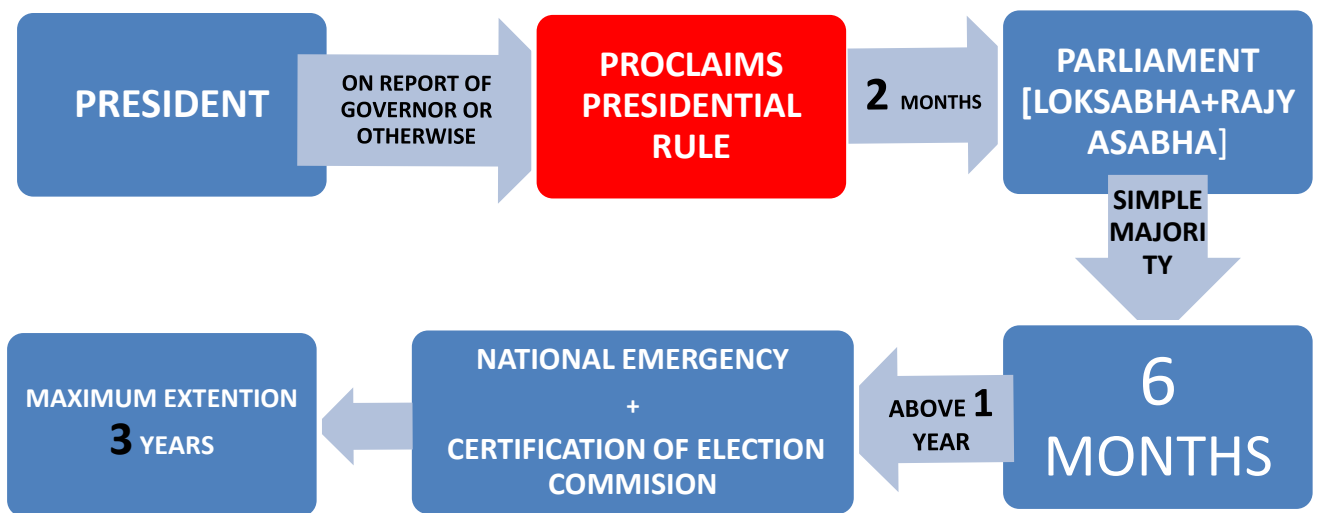


- **Article 356** provides that the **president**
  - a) On the receipt from the Governor or
  - b) **Otherwise** is **satisfied** that the situation as a rise in which the government of a state cannot be carried on in accordance with the constitution

- ✓ The 38<sup>th</sup> Amendment act of 1975 made the satisfaction of the President in invoking Article 356 final and conclusive which would not be challenged in any court on any ground.
- ✓ But, this provision was subsequently deleted by the 44<sup>th</sup> Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review.
- ✓ Once a proclamation is made, he assumes to himself, the functions of the Government of the State and declares that the powers of the legislature of the State shall vest in Parliament.
- ✓ These powers, however, do not include the powers relating to High Courts

---

- **Parliamentary approval**



**44<sup>TH</sup> CAA, 1978**

- ✓ A proclamation imposing president's rule must be approved by a **simple majority** by both the houses of parliament within **two months** from the date of its issue. [ **Article 356[3]** ]
- ✓ However, if the proclamation of President's rule is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided that the Rajya Sabha approves it in the meantime.
- ✓ a proclamation once approved by Parliament shall[ unless revoked] remain in Force for a period of **six months** [changed to 1 year from 42<sup>nd</sup> CAA, 1976 again

changed to 6 months by 44<sup>th</sup> CAA, 1978] from the date of issue of such proclamation [**article 356[4]**]

- ✓ for the further continuance of emergency it must be approved by Parliament each time
- ✓ **Revocation:** President can at any given time revoke President's rule.

---

- **Duration of President's rule:**

- ✓ No such proclamation shall remain in Force for the period longer than **3 years**. [**proviso article 356[4]**]
- ✓ **article 356[5]** provides that resolution for continuance of emergency **beyond one year** shall not be passed by the Parliament unless
  1. A proclamation of emergency is in operation in whole of India or in whole or any part of the state; and
  2. Election Commission certifies that continuation of emergency is necessary on account of difficulties in holding elections to the state assemblies.

---

- **Consequences of the President's rule:**

- The President acquires the following extraordinary powers when the President's rule is imposed in a state:
  1. He can take up the functions of the state government and powers vested in the governor or any other executive authority in the state.
  2. He can declare that the powers of the state legislature are to be exercised by the parliament.
  3. He can take all other necessary steps including the suspension of the constitutional provisions relating to any body or authority in the state.

---

- **RECOMMENDATIONS OF THE SARKARIA COMMISSION (1983)**

- The Sarkaria Commission made the following recommendations regarding use of Article 356:
  - ✓ This article should be used very sparingly and as a matter of last resort. It can be invoked only in the event of political crisis, internal subversion, physical breakdown, and noncompliance with the constitutional directives of the centre.
  - ✓ Before that, a warning should be issued to the errant state in specific terms and an alternate course of action must be explored before invoking it.



- ✓ The material fact and grounds on the basis of which this article is invoked should be made an integral part of the Proclamation; it will ensure effective Parliamentary control over the invocation of President Rule.
- ✓ The Governor's report must be a 'speaking document' and it should be given wide publicity.
- ✓ So the Sarkaria Commission was an important attempt to streamline the centre-state relations.
- ✓ It has become a reference point for any discussion on centre-state relations and it has been frequently referred to even by the judiciary.
- ✓ On its recommendation, the Inter-State council was established in 1990 and it has considered its recommendations.

---

- **Judicial review of proclamation of President's rule**

- ✓ **In S R Bommai vs. Union Of India 1994**
- ✓ Supreme Court issued the historic order, which in a way put an end to the arbitrary dismissal of State governments under Article 356 by spelling out restrictions.
- ✓ The verdict concluded that the power of the President to dismiss a State government is not absolute.
- ✓ The verdict said the President should exercise the power only after his proclamation (imposing his/her rule) is approved by both Houses of Parliament.
- ✓ Till then, the Court said, the President can only suspend the Legislative Assembly by suspending the provisions of Constitution relating to the Legislative Assembly.
- The following propositions have been laid down by the Supreme Court with respect to Article 356:
  - ✓ Presidential proclamation dissolving a State Legislative Assembly is subject to judicial review.
  - ✓ The burden lies on the government of India to prove that relevant material existed to justify proclamation.
  - ✓ If the court strikes down the proclamation, it has power to restore the dismissed State Government to office.
  - ✓ A State Government pursuing ant-secular politics is liable to action under Article 356 of the Constitution.

- **Rameshwar Prasad vs. Union of India 2006**

- ✓ Supreme Court held that Governor while recommending dissolution of assembly has to annex with report relevant materials substantiating his decision. In absence of relevant materials it will be considered as a personal opinion of the Governor

### **Difference between the national Emergency and president's rule**

<b>S.N.</b>	<b><u>National Emergency (352)</u></b>	<b><u>President's Rule (356)</u></b>
<b>1.</b>	It can be proclaimed only when the security of India or a part of it is threatened by <b><u>war, external aggression or armed rebellion.</u></b>	It can be proclaimed when the government of a state cannot be carried on in <u>accordance with the provisions of the Constitution</u> due to <u>reasons</u> which may not have any connection with war, external aggression or armed rebellion.
<b>2.</b>	During its operation, the state executive and legislature <u>continue to function</u> and exercise the powers assigned to them under the <b>Constitution.</b> Its effect is that the <u>Centre gets concurrent powers of administration and legislation in the state.</u>	During its operation, the state executive is <u>dismissed</u> and the state legislature is either <u>suspended or dissolved.</u> The president administers the state through the <u>governor</u> and the Parliament makes laws for the state. In brief, the executive and legislative powers of the state are assumed by the Centre.
<b>3.</b>	There is <b><u>no maximum period</u></b> prescribed for its operation. It can be continued indefinitely with the approval of Parliament for every six months.	There is a maximum period prescribed for its operation, that is, <b><u>three years.</u></b> Thereafter, it must come to an end and the normal constitutional machinery must be restored in the <b>state.</b>
<b>4.</b>	It suspends <b>fundamental rights [19 and other FR except 20&amp; 21]</b> of the citizens.[358+359]	It has no effect on Fundamental Rights (FR) of the citizens.
<b>5.</b>	Every resolution of Parliament approving its proclamation or its continuance must be passed within <b><u>1 month</u></b> by a <b><u>special majority.</u></b>	Every resolution of Parliament approving its proclamation or its continuance can be passed within <b><u>2 months</u></b> only by a <b><u>simple majority.</u></b>
<b>6.</b>	Lok Sabha can pass a resolution for its revocation.	There is no such provision. It can be revoked by the President only on his own discretion.

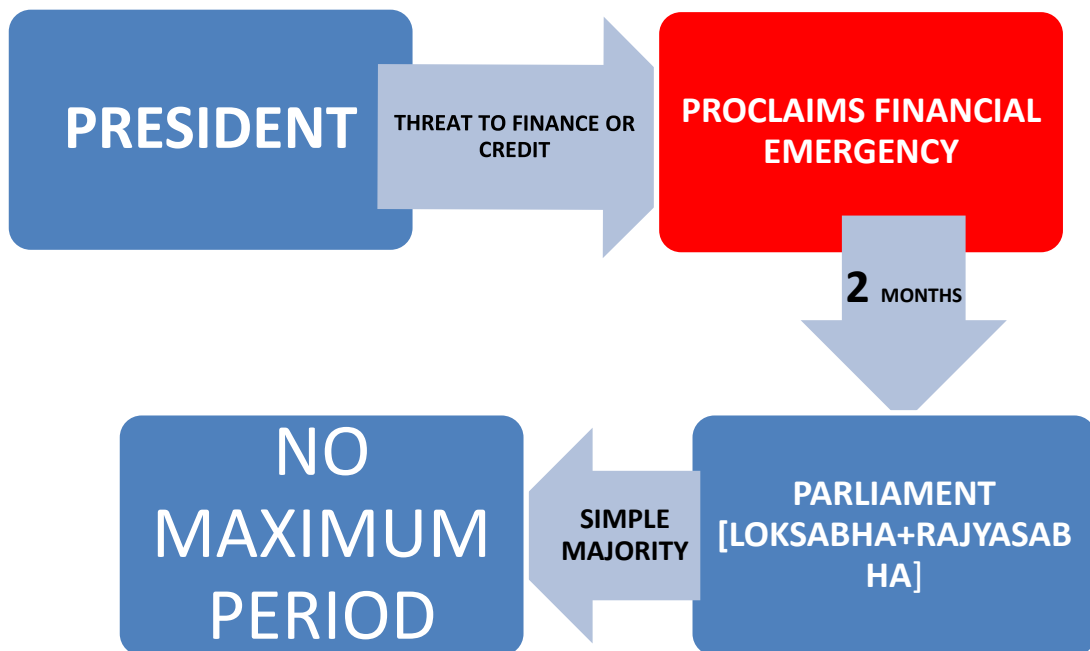
## PROVISIONS AS TO FINANCIAL EMERGENCY [ARTICLE 360]

- **Proclamation Of Financial Emergency**

- It states that if the **President** is satisfied that a situation has arisen whereby the **financial stability or credit of India** (or any part thereof) is **threatened**, he may, by a proclamation, make a declaration to that effect.
- It was formerly by **38<sup>th</sup> CAA 1975**, provided that the satisfaction of the President on this point was to be **final and conclusive**, and could not be questioned in any court on any ground. It was further provided that neither the Supreme Court nor any other court had the jurisdiction to go into the validity:
  1. Of such a proclamation of the President; or
  2. Of the continued operation of such a proclamation.
- The provision was, however, deleted by the **44<sup>th</sup> Amendment, 1978**.

---

- **Parliamentary Approval and Duration of the Financial Emergency**



- A proclamation of financial emergency must be approved by both the Houses of Parliament within **two months** from the date of its issue.
  - A resolution approving the proclamation of financial emergency can be passed by either House of Parliament (Lok Sabha or Rajya Sabha) only by a **simple majority**.
- 
- However, if the proclamation of Financial Emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes

place during the period of two months without approving the proclamation, then the proclamation survives until **30 days from the first sitting** of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.

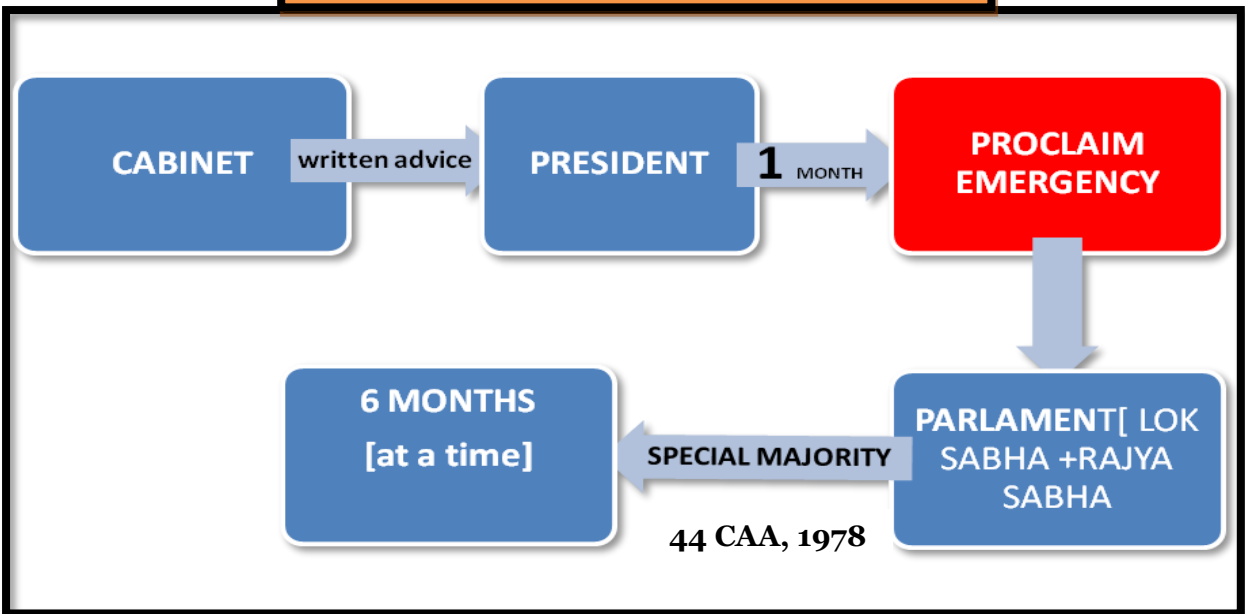
- Once approved by both the Houses of Parliament, the Financial Emergency continues **indefinitely** till it is revoked. This implies two things:
  1. **Repeated Parliamentary approval is not required** for its continuation.
  2. There is no maximum time limit prescribed for the operation of financial emergency
- A proclamation of Financial Emergency may be revoked by the **President** anytime without any Parliamentary approval.

---

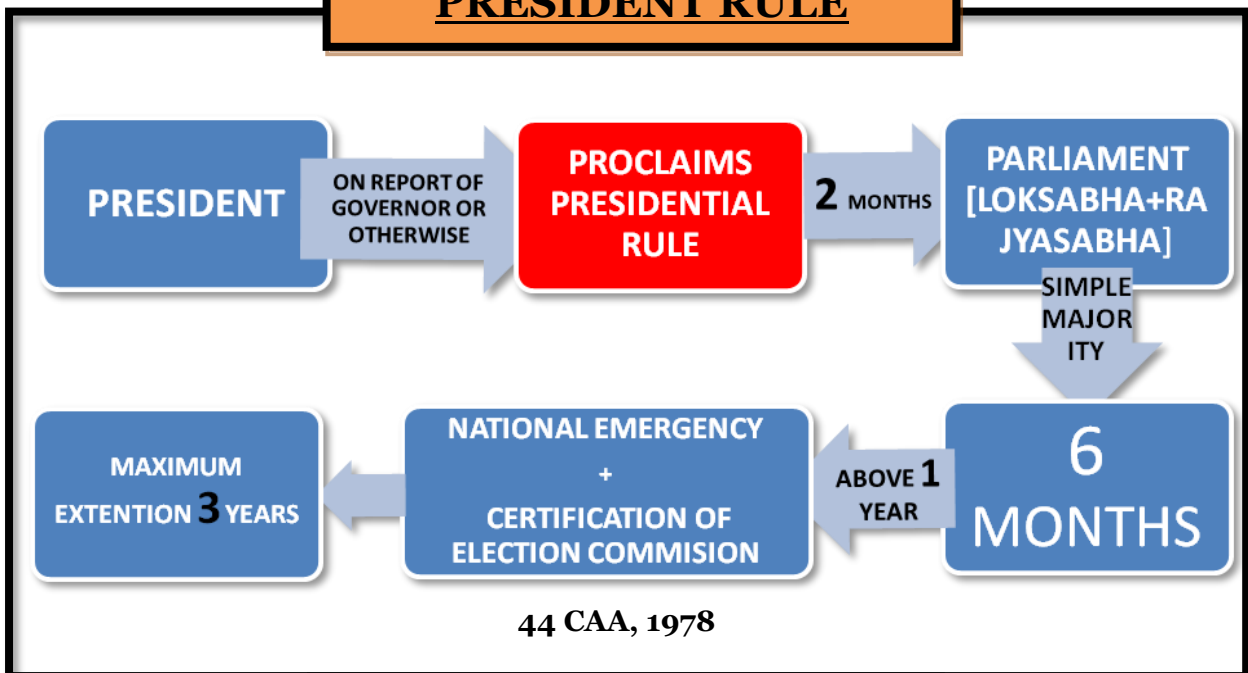
- **Effects of Financial Emergency**

1. During the financial emergency, the executive authority of the Center expands and it can give financial orders to any state according to its own.
  2. All money bills or other financial bills that come up for the President's consideration after being passed by the state legislature can be reserved.
  3. Salaries and allowances of all or any class of persons serving in the state can be reduced
  4. The President may issue directions for the reduction of salaries and allowances of;
    - i. All or any class of persons serving the Union and
    - ii. The judges of the Supreme Court and the High Court
- Thus, during the operation of a financial emergency, the Center gets full control over states in financial matters, which is a threat to the state's financial sovereignty.
  - Earlier, a serious financial crisis had arisen in India in 1991, but even then a Financial Emergency was not announced. [Balance of payment crises]
  - Financial emergency has not been imposed in India till date.

## NATIONAL EMERGENCY



## PRESIDENT RULE



## FINANCIAL EMERGENCY

